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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 1118

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

MARY JO DICKEN AND ELIZABETH M. DICKEN, B. M. MURRAY, EXECUTOR OF THE ESTATE OF EMMA GANG, DECEASED, JACOB E. SANDUSKY, SHERIFF

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Paul A. Porter, Administrator of the Office of Price Administration, petitioner herein, prays that a writ of certiorari issue (1) under Section 240 (a) of the Judicial Code to review the judgment of the District Court for the Southern District of Ohio in the above-entitled case entered March 26, 1946, dismissing a suit for injunction, now pending on appeal in the United States Circuit Court of Appeals for the Sixth Circuit, and (2) under Section 240 (a), and, in the alternative, Section 262 of the Judicial Code to review an order of the United States Circuit Court of Appeals for the Sixth Circuit, entered on April

5, 1946, denying an application by the petitioner for a temporary injunction pending the determination of an appeal from the order of the District Court.

OPINIONS BELOW

The opinion of the District Court (R. 16–25) has not yet been reported. The Circuit Court of Appeals did not render an opinion.

JURISDICTION

The judgment of the District Court was entered on March 26, 1946 (R. 33), and the order of the Circuit Court of Appeals denying an injunction pending appeal on April 5, 1946 (R. 46). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and, in the alternative, under Section 262 of the Judicial Code.

QUESTIONS PRESENTED

1. Whether Section 265 of the Judicial Code prohibits a District Court from issuing an injunction under Section 205 (a) of the Emergency Price Control Act to restrain eviction of a tenant pursuant to an order of a state court, although such eviction would violate that Act and the Rent Regulation for Housing issued thereunder.

2. Whether the Circuit Court of Appeals abused its discretion in refusing to issue an injunction to maintain the *status quo* pending appeal in view

of its dismissal as moot of another and similar case after the tenant had been evicted subsequent to the denial of an injunction pending appeal.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are Section 265 of the Judicial Code (28 U. S. C. 379), the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App. Sec. 901, *et seq.*, as amended) and Rent Regulation for Housing, as amended (10 F. R. 3436) issued under that Act. Section 265 is set forth in the Appendix, *infra*, p. 19. The provisions of the Price Control Act and of the Regulation are set forth in Appendix to the petition for certiorari in *Porter* v. *Lee*, Nos. 1116–1117.

STATEMENT

This case is brought here along with *Porter* v. *Lee*, Nos. 1116–1117, which involves the same problem and which ties into the present case in a manner to be described.

Section 6 of the Rent Regulation for Housing provides that no tenant shall be removed or evicted (except on grounds none of which is or was present in this case) unless, on petition, the Administrator of the Office of Price Administration issues a certificate authorizing the eviction.[1] Violation of these Regulations is forbidden by Section

[1] The validity of this provision is not challenged, nor could it be attacked in this proceeding. *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

4 (a), and Section 205 empowers the Administrator to seek injunctive relief against such violations.

This is a suit for an injunction by the Administrator of the Office of Price Administration to restrain an eviction of a tenant in violation of this provisions (R. 1–3). As appears from a stipulation as to the facts (R. 14–15), the tenant is in possession of a house located within the Columbus Defense Rental Area which was owned by the Estate of Emma Gang, deceased. The house was sold by her Executor, respondent B. M. Murray, pursuant to authority granted by an order of the Probate Court of Franklin County, Ohio. After the sale, the purchasers, the respondents, Mary Jo Dicken and Elizabeth M. Dicken, obtained *ex parte* from the Probate Court a writ of possession directing respondent Jacob E. Sandusky as Sheriff of Franklin County to evict the tenant and to place the purchasers in possession. No certificate was applied for or obtained from the Administrator of the Office of Price Administration authorizing the eviction as required by the Rent Regulation. While the writ was in the hands of the Sheriff for eviction the Administrator brought this action against the owners, the executor and the Sheriff to restrain the eviction (R. 26). On March 26, 1946, the District Court, after issuing a temporary injunction (R. 9–10, 30–31), dismissed the suit for injunction on the ground that Section 265 of the Judicial Code (28 U. S. C. § 379) barred the relief sought (R. 27–28).

The District Court, however, entered an order restraining the defendants from evicting the tenant pending determination by the Circuit Court of Appeals of an application for an injunction prohibiting the eviction pending an appeal to that Court (R. 37–38). Notice of appeal was filed March 26, 1946 (R. 34), and on the same day an application for an injunction to restrain eviction of the tenant pending the appeal was filed in the Circuit Court of Appeals for the Sixth Circuit (R. 42–43). This application was denied on April 5, 1946 (R. 46), thus removing all obstacles to the eviction of the tenant by the Sheriff. The Circuit Court of Appeals has not yet heard the case on the merits.

Three days later, on April 8, 1946, the same Circuit Court of Appeals dismissed, on the ground of mootness, appeals by the Administrator in *Porter* v. *Lee*, Nos. 10,007 and 10,079, from similar denials by a District Court of injunctions to restrain eviction, where, subsequent to the decision of the District Court, the tenant had moved out of the premises under threat of forcible eviction. There too the District Court had denied the Administrator relief because of an asserted lack of jurisdiction, and the Circuit Court of Appeals had denied the Administrator a stay pending appeal from the first of the two orders there involved before the tenant was evicted. A petition for writs of certiorari in the *Lee* cases is being filed together with this petition.

In order to prevent the eviction of the tenant in this case, an application for an injunction restraining the eviction pending the determination of this petition for a writ of certiorari, and if certiorari be granted, pending the final disposition of the case by this Court, was made to and granted by Mr. Justice Reed on April 10, 1946.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals for the Sixth Circuit erred in denying an injunction to restrain the eviction of the tenants pending its decision on the appeal from the District Court's decision.

2. The District Court erred in dismissing this action on the ground that Section 265 of the Judicial Code prohibited it from issuing an injunction under Section 205 (a) of the Emergency Price Control Act, restraining the eviction of a tenant pursuant to an order of a state court, although such eviction would violate the Federal Act and the Rent Regulation for Housing issued thereunder.

REASONS FOR GRANTING THE WRIT

1. The decisions (1) of the District Court dismissing the suit for injunction, (2) of the Circuit Court of Appeals denying the stay pending appeal, and (3) of the Circuit Court of Appeals three days later in the *Lee* cases dismissing appeals as moot where a tenant has moved out pending the appeal, make it impossible for the Government to

use the federal courts in the Sixth Circuit to protect tenants from illegal eviction proceedings in state courts. The two decisions of the Circuit Court of Appeals make it impossible for the Administrator to secure a review by that court of any District Court's decision denying an injunction against proceedings in a state court. In each case where an injunction is denied by the District Court, and a restraining order pending appeal denied by the Circuit Court of Appeals, the landlord is free to evict the tenant and the case will then, under the *Lee* ruling, be deemed moot by the Circuit Court of Appeals. In these circumstances, the Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

2. The resulting impairment of the Administrator's power to prevent unlawful evictions presents a question of importance in the administration of the Emergency Price Control Act. That effective control over rents necessitates control over evictions was recognized by Congress in the Price Control Act when it granted the Administrator power to prevent evictions as well as authority over rents, and also by this Court during an earlier but similar emergency in *Block* v. *Hirsch*, 256 U. S. 135, 157–158, when it said: "If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail."

The machinery for eviction of tenants is provided by the State and is summary in character and operation. In order to prevent unlawful evictions and other violations of the rent regulations the Administrator has often found it necessary to apply for injunctions in Federal District Courts.

As Judge Parker stated in *Brown* v. *Wright*, 137 F. 2d 484, 488 (C. C. A. 4):

> If the Administrator were denied injunctive relief from threatened violation because of the pendency of state court proceedings and were required to intervene in such proceedings for relief, resulting delays might well render the Act nugatory in states not in sympathy with the legislation. The federal government is not so impotent that it must depend upon instrumentalities of the states for the enforcement of legislation so vital; * * *

If the Administrator is unable to apply to the federal courts for relief a great measure of protection will have been removed in one of the most critical fields at present under price control. It is common knowledge that the shortage in housing has increased, not decreased, since the war. In his report to the President, Wilson W. Wyatt, the Housing Expediter, stated (p. 3):

> In October 1945, 1,200,000 families were living doubled up with other families. At that time the situation was critical. It is rapidly becoming worse. The following

table shows with shocking clarity that even without reducing the number of families which were doubled up in October 1945, we would have to build approximately 3,000,000 new homes by the end of 1945 just to keep the situation from becoming worse.

The pressure for evictions indicated by the applications for and notices of eviction, now being received by the Administrator at the rate of 1,250,000 per year, shows the grave dangers to the rent control system which any impairment of the Administrator's control over evictions would involve.[2]

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[2] The following table shows the number of eviction certificates (required under section 6 (b) of the regulation before a tenant may be evicted), requested since 1943. The number of eviction notices (required under Section 6 (a) of the regulation before a tenant may be evicted), received since 1943 is also given. It will be noticed that in the first two months of 1946 more eviction certificates were requested than in the entire second half of 1943.

EVICTION CERTIFICATES

	Requested		*Requested*
1st half 1943	41,314	1st half 1945	143,391
2nd half 1943	73,831	2nd half 1945	150,357
1st half 1944	103,318	2 mos. 1946	76,428
2nd half 1944	116,004		

EVICTION NOTICES

	Receipts		*Receipts*
1st half 1943	254,980	1st half 1945	381,252
2nd half 1943	318,600	2nd half 1945	382,458
1st half 1944	386,867	2 mos. 1946	139,654
2nd half 1944	386,629		

Derived from: Statistical Report of OPA Area Office Operations, 1943–1944; Summary Rent Operating Report 1945–1946.

If a remedy against unlawful state action is denied the Administrator in the federal courts it is evident from the pressure for housing and the huge volume of evictions at present that the number of illegal evictions will be greatly increased.

3. The denial by the Circuit Court of Appeals of the injunction pending the appeal to that court was an abuse of discretion because if the tenant were evicted before the appeal could be heard this would mean that the landlord had accomplished his unlawful objective and the tenant suffered the injury the regulation was intended to avert, and because, if that court adheres to its rule in the *Lee* cases, no review of the district court's decision would be possible in the Circuit Court of Appeals at all.

The Court is respectfully referred to pp. 11–12 of our petition in the *Lee* cases, in which the same point is raised, for an amplified statement as to why the denial of a restraining order pending appeal in these circumstances is an abuse of discretion.

Correction by this Court on certiorari of the error of the Sixth Circuit Court of Appeals in holding the *Lee* cases moot will not alone afford effective relief. Such a disposition would merely require the Circuit Court of Appeals to hear both the *Lee* cases and the instant case on the merits. But in all likelihood the tenant here would have been forced out of the premises in the meantime.

The major harm in an eviction proceeding is done when the tenant is dispossessed from the premises. In the acute housing shortage that now exists it is almost impossible for a tenant to find new quarters and hardship inevitably ensues. Furthermore, the power of this Court ultimately to order reinstatement in vacated premises months later obviously does not safeguard tenants, inasmuch as the original removal causes the most serious injury whether or not a subsequent offer of reinstatement is required. The result will normally be that the landlord has accomplished his unlawful purpose, and the purpose of the Act and the Regulations have been frustrated.

This Court has power under Section 240 (a) of the Judicial Code to review the denial by the Circuit Court of Appeals of a temporary injunction pending appeal. The "power to grant writs of certiorari extends to interlocutory as well as final decrees". *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 418; Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States*, p. 202. We think that the circumstances of this case, coupled with the decision in the *Lee* cases, are sufficiently extraordinary to warrant review of the interlocutory order. If there should be any question as to this Court's power to review the order on certiorari under Section 240 (a), the case is an appropriate one for the issuance of a writ of certiorari under Judicial Code, Section 262, in order to protect

the appellate jurisdiction of this Court. For if the eviction is not stayed pending appeal, this court in the exercise of its ordinary appellate jurisdiction would be precluded from giving effective relief, a result which in substance denies the Administrator his right to appeal. *Cf. House* v. *Mayo*, 324 U. S. 42, 44; *In re 620 Church Street Corp.*, 299 U. S. 24, 26; *Roche* v. *Evaporated Milk Association*, 319 U. S. 21, 25–26; *United States Alkali Association* v. *United States*, 325 U. S. 196, 201–204; *Ex parte Peru*, 318 U. S. 578, 582–585. And, in *House* v. *Mayo*, *supra*, the Court stated (pp. 44–45):

> * * * And not only does our review extend to a determination of whether the circuit court of appeals abused its discretion in refusing to allow the appeal, but if so, it extends also to questions on the merits sought to be raised by the appeal. * * *

4. In view of the peculiar circumstances (a) whereby the Circuit Court of Appeals would, had the tenant been evicted, have precluded itself from hearing the appeal in this case on the merits, (b) the need for a prompt determination that the district courts have jurisdiction to enjoin unlawful state court eviction proceedings, (c) the conflict discussed below between the district court ruling and decisions of this Court, of two circuit courts of appeals, and of many district courts, and (d) the fact that a related question is before this Court in the *Lee* cases, in which certiorari is sought

after the judgment of the Circuit Court of Appeals, we believe this an appropriate case for the Court to review the decision of the District Court before judgment in the Circuit Court of Appeals, as permitted by Section 240 (a).[3]

The holding of the District Court that Section 265 of the Judicial Code barred it from enjoining the execution of an eviction order of a state court conflicts with the decision of this Court in *Bowles* v. *Willingham*, 321 U. S. 503 (1944). In dealing with that question this Court said (p. 510–511):

> I. We are met at the outset with the question whether the District Court could in any event give the relief which the Administrator seeks in view of § 265 of the Judicial Code (36 Stat. 1162, 28 U. S. C. § 379) which provides that "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases

[3] This Court has granted certiorari before judgment in the Circuit Court of Appeals where that court has previously indicated its disposition of a case (*Fetters* v. *United States*, 283 U. S. 638, 641), where a similar question is already pending before this Court in another case (Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States*, pp. 205, 621, and cases cited), and where the point is of great importance requiring prompt settlement in the interest of the public (*id.*, at 205–6, 621–2). This case falls within all three categories, the first two because of the disposition by the court below of the *Lee* cases and the fact that they are now before this Court, and the third because of the box in which the *Lee* cases and the denial of a stay have placed tenants in the Sixth Circuit during this critical housing period.

where such injunction may be authorized by any law relating to proceedings in bankruptcy." *We recently had occasion to consider the history of § 265 and the exceptions which have been engrafted on it. Toucey v. New York Life Ins. Co., 314 U. S. 118. In that case we listed the few Acts of Congress passed since its first enactment in 1793 which operate as implied legislative amendments to it. 314 U. S. pp. 132–134. There should now be added to that list the exception created by the Emergency Price Control Act of 1942. By § 205 (a) the Administrator is given authority to seek injunctive relief in the appropriate court (including the federal district courts) against acts or practices in violation of § 4, e. g., the receipt of rent in violation of any regulation or order under § 2.* Moreover, by § 204 (d) of the Act one who seeks to restrain or set aside any order of the Administrator or any provision of the Act is confined to the judicial review granted to the Emergency Court of Appeals, which was created by § 204 (c) and to this Court. As we recently held in *Lockerty* v. *Phillips*, 319 U. S. 182, 186, 187, Congress confined jurisdiction to grant equitable relief to that narrow channel and withheld such jurisdiction from every other federal and state court. Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in § 265 which is designed to avoid collisions between state

and federal authorities (*Toucey* v. *New York Life Ins. Co., supra*) thus does not come into play. The powers of the District Court under § 205 (a) of the Act and § 24 (1) of the Judicial Code are ample authority for that court to protect the exclusive federal jurisdiction which Congress created." [Italics supplied.]

The District Court sought to distinguish the *Willingham* case on the ground that it applied only where a state court was attempting to enjoin the Administrator from acting, and ruled that since 205 (c) of the Act gave "concurrent" jurisdiction to state courts, Section 265 required it to hold that the federal court was not an "appropriate" court in which to institute this proceeding and barred it from granting relief. The *Willingham* case itself places no such limit on the power of the federal court, and there is nothing in the Act to indicate that the exception to Section 265 is so limited. The District Court's endeavor to distinguish the *Willingham* decision on the ground that it involved a case where the state court was deprived of jurisdiction of the proceedings sought to be enjoined and where therefore there was no room within which Section 265 of the Judicial Code could operate, overlooks the fact that this was only one basis for the decision in the *Willingham* case. The other ground was that Section 205 (a) of the Emergency Price Control Act constitutes an implied statutory exception to Section 265. The fact that the Administrator

could also, if he chose, have proceeded in a state court, does not deprive him of his statutory right to resort to the federal court, nor does that fact distinguish the *Willingham* case, since there too the Administrator might have proceeded in a state court.

As the District Court itself admitted, its decision is in direct conflict with decisions of the Fourth and Fifth Circuits. In *Brown* v. *Wright*, 137 F. 2d 484 (C. C. A. 4), the court said (p. 488):

> With respect to section 265 of the Judicial Code, we do not think that section may properly be construed as forbidding the granting of an injunction to restrain interference by state courts with the enforcement of a federal statute by an agency to which Congress has delegated exclusive power to enforce it. * * *
> * * * it is not to be presumed that a general statute limiting the power of federal courts to issue injunctions was intended to apply to such cases. In any event, the provision of the Emergency Rental Control Act should be construed as modifying or creating an exception to the general provisions of the statute. * * *

In *Henderson* v. *Fleckinger*, 136 F. 2d 381 (C. C. A. 5) the court said (p. 382):

> Section 265 of the Judicial Code forbidding the grant of an injunction by a court of the United States to stay proceedings in a state court must be considered as modified by the later provision of Section

> 205 (a) of the Emergency Price Control Act. This latter Act formulated important federal policies, and charged the Administrator with executing them, and armed him with injunction as his main weapon. We do not think it was intended that his use of it is to be denied because a proceeding in a state court is contravening the federal policies. The federal Act, assuming its constitutionality, is a part of the supreme law of the land, and the courts ought to carry it out fully, using the injunctive process it prescribes. * * *

In many instances the district courts have granted injunctions to restrain eviction proceedings in state courts. This was done in *Henderson* v. *Kimmel,* 47 F. Supp. 635 (D. Kans. 1942); *Brown* v. *Wick,* 48 F. Supp. 887 (E. D. Mich., 1943); *Brown* v. *Wood,* 59 F. Supp. 872 (N. D. Cal., 1943); *Bowles* v. *Rocks,* 60 F. Supp. 653 (W. D. Pa. 1945); *Bowles* v. *Hall,* 63 F. Supp. 826 (W. D. Pa 1945); *Bowles* v. *Fontanello,* 3 OPA Op. & Dec. 5119 (W. D. Pa. 1945); *Brown* v. *Wilson,* 1 OPA Op. & Dec. 1791 (W. D. Wash. 1943).

5. The procedure which the Court is requested to follow in this case is similar to that in *Rickert Rice Mills* v. *Fontenot,* 296 U. S. 569, 297 U. S. 110. The district court had there refused to grant an injunction restraining the collection of taxes under the Agriculture Adjustment Act. The Circuit Court of Appeals denied an applica-

tion for an injunction pending appeal. A petition for certiorari was filed in this Court to review both the judgment of the district court and the denial of the temporary injunction by the circuit court of appeals. Certiorari was granted without limitation, the Court issued its own injunction pending appeal, and this Court heard the case on the merits.

CONCLUSION

The Circuit Court of Appeals and District Court have decided questions of importance to the enforcement and administration of the Emergency Price Control Act. The denial of the injunction pending appeal by the Circuit Court of Appeals means that, in all probability, no decision on the merits could be obtained there and is an abuse of discretion calling for the exercise of the supervisory powers of this Court. The decision of the District Court, thus in effect sustained by the Circuit Court of Appeals, conflicts with a decision of this Court and with decisions of other Circuit Courts of Appeal. The decisions below are clearly wrong. For these reasons a writ of certiorari should be granted.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement,
Office of Price Administration.

APPENDIX

Section 265 Judicial Code (28 U. S. C. 379) reads as follows:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. (Mar. 3, 1911, ch. 231, § 265, 36 Stat. 1162).

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 1118

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

MARY JO DICKEN AND ELIZABETH M. DICKEN, B. M. MURRAY, EXECUTOR OF THE ESTATE OF EMMA GANG, DECEASED, AND JACOB E. SANDUSKY, SHERIFF

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the District Court has not yet been reported. The Circuit Court of Appeals did not render an opinion.

JURISDICTION

The judgment of the District Court was entered on March 26, 1946 (R. 33), and the order of the Circuit Court of Appeals denying an injunction pending appeal on April 5, 1946 (R. 46). The

petition for a writ of certiorari was filed in this Court on April 15, 1946. Certiorari was granted on April 29, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and, in the alternative, under Section 262 of the Judicial Code.

QUESTIONS PRESENTED

1. Whether Section 265 of the Judicial Code prohibits a District Court from issuing an injunction under Section 205 (a) of the Emergency Price Control Act to restrain eviction of a tenant pursuant to an order of a state court, although such eviction would violate that Act and the Rent Regulation for Housing issued thereunder.

2. Whether the Circuit Court of Appeals abused its discretion in refusing to issue an injunction to maintain the *status quo* pending appeal, particularly in view of its dismissal as moot of another and similar case after the tenant had been evicted subsequent to the denial of an injunction pending appeal.

STATUTES AND REGULATION INVOLVED

The statutes and regulation involved are Section 265 of the Judicial Code (28 U. S. C. 379), the Emergency Price Control Act of 1942, 56 Stat. 23, as amended (50 U. S. C. App., Supp. IV, Sec. 901, *et seq.*), and Rent Regulation for Housing, as amended (10 F. R. 3436, 13528) issued under the Act. Section 265 is set forth in the Appendix.

infra, p. 18. The pertinent provisions of the Price Control Act and of the regulation are set forth in the Appendix to petitioner's brief in *Porter* v. *Lee*, Nos. 1116, 1117.

STATEMENT

This case is brought here along with *Porter* v. *Lee*, Nos. 1116, 1117, which involves the same problem and which ties into the present case in a manner to be described.

Section 6 of the Rent Regulation for Housing provides that no tenant shall be removed or evicted (except on grounds none of which is or was present in this case) unless, on petition, the Administrator of the Office of Price Administration issues a certificate authorizing the eviction.[1] Violation of these regulations is forbidden by Section 4 (a), and Section 205 (a) empowers the Administrator to seek injunctive relief against such violations.

This is a suit for an injunction by the Administrator of the Office of Price Administration to restrain an eviction of a tenant in violation of this Regulation (R. 1–3). As appears from a stipulation as to the facts (R. 14–15), the tenant is in possession of a house located within the Columbus Defense Rental Area which was owned by the Estate of Emma Gang, deceased. The house was sold by her Executor, respondent B. M.

[1] The validity of this provision is not challenged, nor could it be attacked in this proceeding. *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

Murray, pursuant to authority granted by an order of the Probate Court of Franklin County, Ohio, which confirmed the sale and included a writ of possession. Murray thereupon "issued a precipe and a writ of possession was issued to the Sheriff of Franklin County, Ohio, by the Probate Court" directing respondent Jacob E. Sandusky as Sheriff of Franklin County to evict the tenant and to place the purchasers in possession (R. 14). The sheriff thereupon notified the tenant to vacate before January 22, 1946 (R. 14–15).

No certificate was applied for or obtained from the Administrator of the Office of Price Administration authorizing the eviction, as required by the Rent Regulation. While the writ was in the hands of the Sheriff for execution the Administrator brought this action against the owners, the executor and the Sheriff to restrain the eviction. On March 26, 1946, the District Court, after issuing a temporary injunction, dismissed the suit for injunction on the ground that Section 265 of the Judicial Code (28 U. S. C. 379) barred the relief sought (R. 33).

The District Court, however, entered an order restraining the defendants from evicting the tenant pending determination by the Circuit Court of Appeals of an application for an injunction prohibiting the eviction pending an appeal to that court. Notice of appeal was filed March 26, 1946, and on the same day an application for

an injunction to restrain eviction of the tenant pending the appeal was made to the Circuit Court of Appeals for the Sixth Circuit. This application was denied on April 5, 1946, thus removing all obstacles to the eviction of the tenant by the Sheriff. The Circuit Court of Appeals has not yet heard the case on the merits.

Three days later, on April 8, 1946, the same Circuit Court of Appeals dismissed, on the ground of mootness, appeals by the Administrator in *Porter* v. *Lee*, Nos. 1116, 1117, from similar denials by a District Court of injunctions to restrain eviction, where subsequent to the decision of the District Court the tenant had moved out of the premises under threat of forcible eviction. There too the District Court had denied the Administrator relief because of an asserted lack of jurisdiction, and the Circuit Court of Appeals had denied the Administrator a stay pending appeal from the first of the two orders there involved before the tenant was evicted.

In order to prevent the eviction of the tenant in this case, an application for an injunction restraining the eviction pending the final disposition of the case by this Court, was made to and granted by Mr. Justice Reed on April 10, 1946.*

*As this brief was about to be returned for final printing, we received respondents' motion to dissolve the injunction, which sets forth facts at variance with the information in our possession. It seems advisable to permit this brief to be printed without change, and to deal with those facts, after further investigation, in a reply to respondents' motion.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals for the Sixth Circuit erred in denying an injunction to restrain the eviction of the tenants pending its decision on the appeal from the District Court's decision.

2. The District Court erred in dismissing this action on the ground that Section 265 of the Judicial Code prohibited it from issuing an injunction under Section 205 (a) of the Emergency Price Control Act restraining the eviction of a tenant pursuant to an order of a state court, when such eviction would violate the Federal Act and the Rent Regulation for Housing issued thereunder.

SUMMARY OF ARGUMENT

I

The eviction which the Administrator sought to enjoin was a clear violation of the regulation. The Circuit Court of Appeals abused its discretion in refusing to stay the unlawful eviction pending appeal, because, without a stay, the tenant would have been evicted before the decision of the District Court could be reviewed. Even though the tenant might be reinstated later, the major harm would have been done and the objectives of the rent regulation frustrated. Moreover, under the ruling of the same court in *Porter* v. *Lee*, Nos. 1116 and 1117, the case would have become moot as soon as the tenant was dis-

possessed, thus making review by the Circuit Court of Appeals of the District Court's decision impossible, and allowing the landlord to achieve his unlawful purpose.

II

Section 265 of the Judicial Code did not bar the issuance of an injunction by the District Court. The Administrator, through the issuance of the rent regulations which prohibited evictions under the circumstances presented by this case, exercised the power which he was given to regulate or prohibit "practices relating to recovery of the possession" (§ 2 (d)). Section 205 (a) of the Emergency Price Control Act authorizes the Administrator to apply for injunctive relief against acts or practices in violation of the Act. And in *Bowles* v. *Willingham*, 321 U. S. 503, this Court held that Section 205 (a) is a statutory exception to Section 265 of the Judicial Code. Similarly three Circuit Courts of Appeals and numerous district courts have upheld the Administrator's right to obtain injunctive relief against unlawful state court eviction proceedings despite Section 265. A contrary result would have gravely impaired the power of the Administrator to enforce the rent regulations. Section 265 of the Judicial Code has not been held a bar to enforcement by the Government of federal statutes in the federal courts.

ARGUMENT

I

The court erred in refusing to enjoin the eviction pending appeal

The attempted eviction here was plainly a violation of the regulation and the Circuit Court of Appeals clearly abused its discretion in refusing to stay the eviction pending appeal. In the absence of such a stay the tenant would have been compelled to vacate the premises before the decision of the District Court could be reviewed.

The major harm in an eviction proceeding is done when the tenant is dispossessed from the premises. In the acute housing shortage that now exists it is extremely difficult, if not impossible, for a tenant to find new quarters, and hardship inevitably ensues. The power of this Court ultimately to order reinstatement in vacated premises months later obviously does not fully safeguard tenants, inasmuch as the original removal causes the most serious injury whether or not a subsequent offer of reinstatement is required. Moreover, since premises do not today remain vacant long, even an offer of reinstatement raises the additional complication that the present occupant of the premises may have to be evicted. Clearly the harm to a tenant forced to move during the pendency of the appeal is very great. The harm resulting to the landlord from maintaining the *status quo* would ordinarily be nowhere near as

great; neither in this case nor in the *Lee* cases is there any proof of harm to the owner at all. From the broader viewpoint of law enforcement policy, it is vital that in a suit to prevent a violation of law, the violator should not be permitted to achieve his illegal end while the suit is still pending.

And if it is proper for a court, in passing upon an application for temporary relief pending appeal, to give weight to the likelihood that the judgment appealed from will be reversed, the District Court's decision that it lacked jurisdiction is, as we shall show, in conflict with the decision of this Court in *Bowles* v. *Willingham*, 321 U. S. 503, as well as the decisions of three other Circuit Courts of Appeals.

Furthermore, a denial of an injunction pending appeal, would, under the ruling in the *Lee* cases have made it impossible to obtain a review of the judgment of the District Court in the Circuit Court of Appeals. Normally the very fact that a case may otherwise become moot pending appeal requires the granting of a stay. *Jamnsen* v. *Belding-Corticelli*, 79 F. 2d 828 (C. C. A. 3).

On any balancing of interests or convenience, the *status quo* clearly should have been preserved pending appeal. *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1; *Ohio Oil Co.* v. *Conway*, 279 U. S. 813; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210. In the absence

of any possible reason for denying the Administrator temporary relief, the action of the court below in this respect was clearly an abuse of discretion, which is aggravated by the decision that the eviction pending appeal renders the case moot.

This Court on certiorari may review the interlocutory as well as the final orders of the Circuit Court of Appeals. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 418; *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U. S. 251, 258; *Panama R. R. Co.* v. *Napier Shipping Co.*, 166 U. S. 280, 284. In view of the number of instances in which the present problem may arise, particularly in the light of the existing housing shortage, it is respectfully submitted that the Court should review the Circuit Court of Appeals' action in denying the stay.

II

The District Court erred in holding that Section 265 of the Judicial Code barred it from granting relief

The holding of the District Court that Section 265 of the Judicial Code barred it from enjoining an eviction is clearly wrong. In *Bowles* v. *Willingham*, 321 U. S. 503, this Court specifically held that the Emergency Price Control Act creates an express statutory exception to Section 265.

Section 205 (a) of the Emergency Price Control Act gives the Administrator authority to

seek injunctive relief against acts or practices in violation of Section 4, which in turn makes it unlawful to do any acts in violation of any regulation issued under Section 2. In issuing the regulations which prohibit evictions in state courts unless a certificate of eviction is secured (with exceptions not here pertinent), the Administrator exercised the power expressly conferred by Congress in Section 2 (d) to "regulate or prohibit * * * renting or leasing practices (including practices relating to recovery of the possession) * * *." An unlawful attempt to evict through the use of state court proceedings is as much a violation of the Act as the receipt of excessive rent, and the federal court on the application of the Administrator has the power to enjoin such violations under Section 205 (a). Thus, as this Court stated in the *Willingham* case, the Act specifically adds an exception to Section 265 of the Judicial Code in addition to those listed in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, which recognized certain "subsequent statutes" as implied legislative amendments to or qualifications of Section 265. As in the case of the other statutory exceptions, Congress here authorized injunctions to stay proceedings in state courts in order to make federal legislation effective. In the *Willingham* case, this Court said (pp. 510–511):

> We are met at the outset with the question whether the District Court could in

any event give the relief which the Administrator seeks in view of § 265 of the Judicial Code (36 Stat. 1162, 28 U. S. C. § 379) which provides that "the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." We recently had occasion to consider the history of § 265 and the exceptions which have been engrafted on it. *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118. In that case we listed the few Acts of Congress passed since its first enactment in 1793 which operate as implied legislative amendments to it. 314 U. S. pp. 132–134. *There should now be added to that list the exception created by the Emergency Price Control Act of 1942. By § 205 (a) the Administrator is given authority to seek injunctive relief in the appropriate court (including the federal district courts) against acts or practices in violation of § 4, e. g., the receipt of rent in violation of any regulation or order under § 2.* Moreover, by § 201 (d) of the Act one who seeks to restrain or set aside any order of the Administrator or any provision of the Act is confined to the judicial review granted to the Emergency Court of Appeals, which was created by § 204 (e) and to this Court. As we recently held in *Lockerty* v. *Phillips*, 319 U. S. 182, 186, 187, Congress confined jurisdiction to grant equitable relief to that

> narrow channel and withheld such jurisdiction from every other federal and state court. Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in section 265 which is designed to avoid collisions between state and federal authorities (*Toucey* v. *New York Life Ins. Co., supra*) thus does not come into play. The powers of the District Court under Section 205 (a) of the Act and Section 24 (1) of the Judicial Code are ample authority for that court to protect the exclusive federal jurisdiction which Congress created. [Italics supplied.]

In addition three Circuit Courts of Appeals have held that Section 265 is not a bar where the Administrator brought injunction proceedings to restrain landlords from further prosecuting eviction suits in state courts. *Henderson* v. *Fleckinger*, 136 F. 2d 381 (C. C. A. 5); *Brown* v. *Wright*; 137 F. 2d 484 (C. C. A. 4); *Bowles* v. *Hayes* (C. C. A. 3), decided April 17, 1946, not yet reported. In many other instances the District Courts have granted injunctions to restrain proceedings in state courts.[2]

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[2] *Henderson* v. *Kimmel*, 47 F. Supp. 635 (D. Kans.); *Brown* v. *Wick*, 48 F. Supp. 887 (E. D. Mich.); *Brown* v. *Wood*, 59 F. Supp. 872 (N. D. Cal.); *Bowles* v. *Rocks*, 60 F. Supp. 653 (W. D. Pa.); *Bowles* v. *Hall*, 63 F. Supp. 826 (W. D. Pa.); *Bowles* v. *Fontanello*, 3 OPA Op. & Dec. 5119 (W. D. Pa., 1945); *Brown* v. *Wilson*, 1 OPA Op. & Dec. 1791 (W. D. Wash. 1943).

The District Court acknowledged that its decision was in conflict with the *Fleckinger* and *Wright* decisions, but contended that it was not bound by them. It sought to distinguish the *Willingham* case on the ground that it applied only where a state court was attempting to enjoin the Administrator from acting, and ruled that since 205 (c) of the Act gave "concurrent" jurisdiction to state courts,[2] Section 265 required it to hold that the federal court was not an "appropriate" court in which to institute this proceeding and barred it from granting relief. The *Willingham* case itself places no such limit on the power of the federal court, and there is nothing in the Act to indicate that the exception to Section 265 is so limited. The District Court's endeavor to distinguish the *Willingham* decision on the ground that it involved a case where the state court was deprived of jurisdiction of the proceedings sought to be enjoined, and where therefore there was no room within which Section 265 of the Judicial Code could operate, overlooks the fact that this was only one of the bases for the decision in the *Willingham* case. The other ground was that Section 205 (a) of the Emergency Price Control Act constitutes a statutory exception to Section

[2] The question of concurrent jurisdiction is discussed in the brief for petitioners in *Porter* v. *Lee*, Nos. 1116, 1117, at pp. 19-28.

265. The fact that the Administrator could also, if he chose, have proceeded in a state court, does not deprive him of his statutory right to resort to the federal court, nor does that fact distinguish the *Willingham* case, since there too the Administrator might have proceeded in a state court.

The power of the Federal Government to secure compliance with its own laws through the federal courts despite Section 265 has often been recognized in connection with other statutes. *National Labor Relations Board* v. *Sunshine Mining Co.*, 125 F. 2d 757 (C. C. A. 9); *Western Fruit Growers, Inc.* v. *United States*, 124 F. 2d 381 (C. C. A. 9); *In re Standard Power & Light Corp.*, 48 F. Supp. 716 (D. Del.).

The Court is respectfully referred to our brief in *Porter* v. *Lee*, Nos. 1116, 1117, submitted herewith, pp. 23–28, for the argument that effective enforcement of the Rent Regulations requires that the Administrator retain his right to obtain injunctions in the federal court to restrain unlawful evictions.

Respondent suggests that, because the property was sold by order of the Probate Court, this in some unexplained way prevents the issuance of an injunction against the eviction. The Administrator has never sought to regulate prices in sales of real estate, whether judicial or otherwise. In this case the Regulation does not in any way con-

trol the sales price of the property, but affects only the attempt by the owner to evict a tenant. For purposes of the Rent Regulation it is immaterial whether ownership of property was transferred by judicial sale or in any other manner, or whether the owner is an executor or a purchaser at such a sale. Regardless of how or when ownership of a house is acquired, the regulation (with exceptions not here pertinent) still prohibits evictions unless the proper eviction certificate is obtained.[4]

The fact that a state Probate Court may have ordered an eviction is, of course, no defense when the Federal law is to the contrary. *Case* v. *Bowles*, No. 261, *Hulbert* v. *Twin Falls County*, No. 238, both decided February 4, 1946.

CONCLUSION

For the foregoing reasons the order of the court below and the judgment of the District Court

[4] The regulations set forth in the appendix to the Government's brief in *Porter* v. *Lee*, Nos. 1116, 1117, state the requirements for obtaining a certificate. For example, a purchaser of a house who wishes to live in it himself and who has paid 20% of the purchase price may secure a certificate authorizing him to pursue his remedies under local law for eviction of the tenant at the end of periods normally ranging between three and six months from the date of filing the application for a certificate. The regulations further provide that where the Administrator makes certain findings a certificate may be obtained without fulfilling these requirements.

should be reversed. Inasmuch as there is no dispute as to respondents' failure to comply with the Regulation, and hence nothing to try, the District Court should be instructed to grant the injunction.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

ROBERT L. STERN,
Special Assistant to the Attorney General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement.
MILTON KLEIN,
Director, Litigation Division.
ALBERT M. DREYER,
IRVING M. GRUBER,
Attorneys, Office of Price Administration.

MAY 1946.

APPENDIX

Section 265 of the Judicial Code (36 Stat. 1162, 28 U. S. C. Section 379) reads as follows:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

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In the Supreme Court of United States

OCTOBER TERM, 1945

No. 1118

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION
PETITIONER

v.

MARY JO DICKEN AND ELIZABETH M. DICKEN, B. N. MURRAY, EXECUTOR OF THE ESTATE OF EMMA GANG, DECEASED, JACOB E. SANDUSKY, SHERIFF

ANSWER TO PETITION FOR A WRIT OF CERTIORARI

In the Supreme Court of United States

OCTOBER TERM, 1945

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In the Supreme Court of United States

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ANSWER TO PETITION FOR A WRIT OF CERTIORARI

Respondents herein pray that the Petition for a Writ of Certiorari be denied for the reasons: (1) That the petitioner has a plain, adequate and complete remedy at law in the State Courts whose proceedings are attempted to be stayed by injunction in the Federal Courts, (2) That the petitioner seeks by injunction in the Federal Courts to restrain a judicial sale proceeding instituted under State Statutes, (3) That the proceedings sought to be enjoined are not within the purview of the Emergency Price Control Act pertaining to Rent Regulation for Housing, and (4) That said writ would bring about a collision between the Tribunals of the States and of the Union.

QUESTIONS PRESENTED

1. Whether the petitioner has a plain, adequate and complete remedy at law.

2. Whether the petitioner has a right by injunctive proceedings in a District Court to restrain a judicial sale ordered by a State Court.

3. Whether judicial sale proceedings to sell real estate having housing accomodations are within the purview of the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U.S.C. App. Sec. 925 (a) et seq.) as amended, and Rent Regulation for Housing as amended (10 F.R. 3436) issued under that Act.

4. Whether Sec. 265 of the Judicial Code prohibits a District Court from issuing an injunction under Sec. 205 (a) of the Emergency Price Control Act to restrain the State Court, in a land sale proceedings, to issue a writ of Habere Facias Possessionem.

STATEMENT

It is a deliberate misstatement of fact to say that "the respondents Mary Jo Dicken and Elizabeth M. Dicken obtained ex parte from the Probate Court a writ of possession directing respondent Jacob E. Sandusky, as Sheriff of Franklin County, to evict the tenant and to place the purchasers in possession." No such proceedings were had. No eviction action was ever instituted in any Court by any of the repondents.

In 1942, prior to the conception and birth of the Rent Regulation for Housing Act, the respondent B. N. Murray, as Executor of the estate of Emma Gang, deceased, instituted proceedings in the Probate Court of Franklin County, Ohio, under favor of the Statute of Ohio known as General Code Section 10510-2, which provides as follows:

> *"As soon as an Executor or Administrator ascertains that the personal property in his hands is insufficient to pay all the debts of the deceased, together with the allowance to the widow and children for twelve months, and the costs of administering the estate, he shall commence a civil action in the Probate Court or the Court of Common Pleas for authority to sell the decedent's real estate."*

The respondent accordingly brought an action in the Probate Court of Franklin County, Ohio, to sell the real estate in question, being the only asset in the estate of said decedent and a full and complete proceeding was had in said Court until its halt by injunctive proceedings brought in this case. For some four years the tenant in possession knew that said premises had to be sold in order to pay real estate taxes, inheritance taxes and claims and debts of the estate and several times requested and obtained a stay of the proceedings in the Probate Court of Franklin County in order that he might purchase said premises, which he failed and neglected to do.

In its orders of sale, confirmation and distribution of

proceeds, said Probate Court included, among other directives, a writ of Habere Facias Possessionem in favor of the purchasers, the respondents Mary Jo Dicken and Elizabeth M. Dicken. No attempt was made by the petitioner's predecessor to vacate, stay or appeal said Order of the Probate Court of Franklin County, Ohio, in that Court or in any other State Court of Ohio, although all had concurrent jurisdiction with the Federal Courts in the enforcement of any regulation pertaining to the Rent Regulation for Housing Act. Instead, injunction proceedings were brought by the Office of Price Administration in the District Court, in the Circuit Court of Appeals, and recently in this Court.

REASONS FOR REFUSING THE WRIT

1. The proceedings sought to be enjoined by the petitioner were not contemplated in the Emergency Price Control Act for the reason that there is no provision in said Act by which any order of sale made or entered by a State or Federal Court held by a Marshal, a Sheriff, Constable, Bailiff or other judicial officer pursuant to applicable State or Federal law shall proceed to carry out such order of sale, nor by any order or regulation promulgated by the Administrator of the Office of Price Administration except perhaps by the order made effective December 1, 1945, by petitioner's predecessor, Chester Bowles, in "*Second Revised Supplementary Order Number 10. Judicial Sales*" (Set forth in Appendix, infra, page 8).

2. The petitioner seeks by injunctive process to do indirectly that which he may not do directly, viz., attempting to effect an appeal from the orders of the Probate Court of Franklin County, Ohio, by obtaining writs of injunction against the respondents who have been charged with the duty of carrying out the order of said Court.

3. Even in this passing and subsiding emergency, the Courts of the United States should not be called upon to circumvent Section 265 of the Judicial Code, (Title 28, Sec. 279 U.S.C.A.) which provides:

> *"The writ of injunction shall not be granted by and court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."*

And, as held by the District Court for the Southern District of Ohio, Eastern Division, in the unreported case of *Bowles* vs. *Rugg*, 913 Civil, following the authority of *Douglas* vs. *Jeannette*, 319 U.S. 157:

> *'Questions of law are not to be haphazardly withdrawn from State Courts by Federal Courts even where the most sacred of the constitutional freedoms is concerned.'*

And, following those decisions in the instant case:

> *"Concededly, emergency legislation presents new problems of enforcement, and perhaps decisions must at times be revised to take cognizance of the state of emergency, but it must also be remembered that the two judicial systems must continue to*

reside together in peace and amity long after any given emergency is past; in fact, as long as our present system of government endures."

4. A Federal Court should not control the judicial acts of a State Court by injunctive processes where there is concurrent jurisdiction and a Federal Statute is involved.

Petitioner's predecessor in office, Chester Bowles, in explaining his *Second Revised Supplementary Order Number 10. Judicial Sales,* made effective December 1, 1945, reasons thus:

"With the end of hostilities and the prospect of return to peace and production of most commodities within the predictable future, it is not deemed necessary to longer continue these limited controls over judicial sales.

Judicial sales are not in the aggregate significant in the economy and the retention of even limited controls with respect to such transaction presents difficulties in administration disproportionate both to the effectiveness of the controls and to any contribution which they make to the stabilization program. Judicial sales being non-recurrent in nature have presented the necessity for an unusually large volume of individual interpretations with respect to minor transactions and have further presented Courts and their officers with difficult questions of determination which changed conditions seem no longer to require."

Furthermore, judicial sales are not common and everyday occurrences even in the busiest Courts of the state, espe-

cially in times of the country's prosperity, and therefore should not be considered parallel or akin to the usual forcible detainer or eviction cases which the most remote and inferior Courts of the land have jurisdiction to entertain.

CONCLUSION

The petitioner has adequate relief at law in the State Courts to modify, vacate, stay or appeal the order of an inferior Court by supersedeas, or otherwise, when the decision of such Court is in conflict with the Federal Statute wherein the State Court is given concurrent jurisdiction with the Federal Court. The granting of injunctive relief to the petitioner in the instant case would bring about a conflict between the Federal and State Tribunals. The proceedings brought by the petitioner and his predecessor virtually amount to an appeal from a judgment of an inferior State Court. No violation of the Emergency Price Control Act by the respondents or the State Court has been shown by the petitioner. The issuance of injunctions and the writ sought or prayed for would be an interference with the proceedings of a Court of a state within the prohibition of Section 265 of the Judicial Code. For the foregoing reasons the petition for a writ or certiorari should be denied.

Respectfully submitted.
B. N. MURRAY,
for all Respondents.

April 25, 1916.

APPENDIX ONE

JOURNAL ENTRY CONFIRMING SALE, ETC.

This day this cause came on to be heard on the report of B. N. Murray, Executor of the above-entitled estate, of his proceedings under the former order of this Court, and upon the motion of said petitioner to confirm the sale made in obedience to said order; the Court having carefully examined said report, and finding the proceedings of said petitioner in all respects correct, and being satisfied that said sale was fairly and legally made, it is ordered that the same be and hereby is approved and confirmed.

It is further ordered that said petitioner execute a deed of all the right, title and interest of the said decedent and said Executor in said real estate, to the purchasers, Mary Jo Dicken and Elizabeth M. Dicken, upon said purchasers paying the sum of $5500.00 in cash; and a writ of possession is hereby awarded to the said purchasers, Mary Jo Dicken and Elizabeth M. Dicken for possession of said premises which are known by street number 633 S. Ohio Avenue, Columbus 5, Ohio.

It is further ordered that said Executor, out of the money in his hands, pay: . . .

It is further ordered that the balance of said proceeds be accounted for by said Executor according to law and that he pay the costs of these proceedings.

C. P. McCLELLAND, *Probate Judge.*

APPENDIX TWO

"SECOND REVISED SUPPLEMENTARY ORDER No. 10 JUDICIAL SALES

1. Judicial Sales excluded from operations of price schedules and maximum price regulations, except as specified. Except as provided in section 2 hereof, no provisions of any price schedule, maximum price regulation or any other pricing order issued by any office of the Office of Price Administration shall be deemed to apply to any sale, at auction or otherwise, (a) held pursuant to the provisions of any order of sale made or entered by a State or Federal court, (b) held by a sheriff, constable, bailiff, marshal or other judicial officer pursuant to applicable State of Federal law, or (c) held by a duly qualified executor or administrator, guardian or other legal representative in liquidating the assets of a decedent, minor or incompetent pursuant to applicable State law.

2. Sales in course of trade. . . . . .

3. Definitions. . . . . .

This supplementary order shall become effective the 1st day of December, 1945.

CHESTER BOWLES,
Administrator."

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In the Supreme Court of United States

OCTOBER TERM, 1945

No. 1118

PAUL A. PORTER, ADMINISTRATOR,
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---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

In the Supreme Court of United States

OCTOBER TERM, 1945

No. 1118

PAUL A. PORTER, ADMINISTRATOR,
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MARY JO DICKEN AND ELIZABETH M. DICKEN, B. N. MURRAY, Executor of the Estate of Emma Gang, Deceased, JACOB E. SANDUSKY, Sheriff

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

Since the filing of this case in this Court, we have had an opportunity to examine the Lee Cases (Nos. 1116 and 1117, in this Court). Those cases should not be linked with the instant case because there is no similarity. The Lee Cases are definitely based on actions primarily and exclusively of eviction. The instant case grows out of an order and confirmation of a judicial sale proceedings brought in the Pro-

suing, with its order of sale and confirmation, a writ of possession, the petitioner could have obtained relief in the State Courts, by stay of execution, supersedeas or otherwise. An order or judgment of a State Court should not be rashly enjoined by a Federal Tribunal where there is an adequate remedy at law in the State Court when a Federal statute is involved, and both Courts, have equal and concurrent jurisdiction, and both are impressed with the duty of enforcement.

CONCLUSION

1. Injunction should not be granted where there is a plain, adequate and complete remedy at law.

2. Judicial sales, by reason of their non-recurrent nature, are not contemplated in the Emergency Price Control Act.

3. If the relief sought by the petitioner be granted, a collision would then exist between the State and Federal Tribunals.

4. The Courts of the United States should not be called upon to circumvent Section 265 of the Judicial Code in a short-lived, passing and subsiding emergency.

The Court's attention is respectfully referred to the respondents' Answer and Brief to the Petition for a Writ of Certiorari.

Respectfully submitted,

B. N. MURRAY,

for himself and the other Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 1118.—October Term, 1945.

Paul A. Porter, Administrator, Office of Price Administrator, Petitioner,
vs.
Mary Jo Dicken and Elizabeth M. Dicken, B. N. Murray, Executor of the Estate of Emma Gang, Deceased; Jacob E. Sandusky, Sheriff.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[May 27, 1946.]

Mr. Justice Black delivered the opinion of the Court.

This case, like *Porter* v. *Lee*, Nos. 1116-1117, this day decided, involves the jurisdiction of the federal District Court to grant an injunction, sought by the Price Administrator under Section 205(a) of the Emergency Price Control Act, to restrain eviction of a tenant under an order of a state court where the Administrator alleges that eviction would violate the Act and valid regulations promulgated pursuant to it. Briefly stated the circumstances of the controversy are these: B. M. Murray, as executor of an estate, pursuant to authority granted him by the Probate Court of Franklin County, Ohio, sold a house located within the Columbus Defense Rental Area. A writ of possession directing the sheriff of the County to evict the tenant and to place the respondent purchasers in possession was obtained in the Probate Court. No certificate authorizing the eviction was sought or obtained from the Price Administrator as is required by Section 6 of the Rent Regulation for Housing. 10 F. R. 3436, 13528. Before the sheriff executed the writ the Price Administrator brought this action for an injunction in the federal District Court. The District Court issued a temporary restraining order but later dismissed the complaint on the ground that Section 265 of the Judicial Code, 28 U. S. C. 379, deprived the federal District Court of jurisdiction to stay the proceedings in the state court. This section provides that: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." The

District Court in dismissing the cause entered an order restraining respondents from evicting the tenant pending determination by the Circuit Court of Appeals for an application for an injunction prohibiting the eviction pending an appeal to that Court. The Administrator made this application in the Circuit Court of Appeals, but it was denied, thus removing all obstacles to eviction of the tenant. The Circuit Court of Appeals has not heard this case. In order to prevent eviction of the tenant the Administrator sought and obtained from Mr. Justice Reed an injunction pending final disposition of this case in this Court and applied for certiorari directly to this Court under Section 240(a) of the Judicial Code which authorizes us to grant certiorari "either before or after the judgment or decree by such lower court." We were prompted to bring the District Court's judgment directly to this Court for review by reason of the close relationship of the important question raised to the question presented in *Porter* v. *Lee*, Nos. 1116, 1117, decided this day.

The District Court was of the opinion that since Section 205(c) of the Act gave concurrent jurisdiction to state courts to grant relief by injunction, the policy of Section 265 against federal injunctions of state proceedings should not be considered impaired by the Emergency Price Control Act. The District Court's conclusion was that if the Administrator wanted an injunction to restrain eviction under state court procedure he should have gone into some state court that had jurisdiction of the cause. The District Court erred in holding that the policy of Section 265 of the Judicial Code should not be considered impaired by the Emergency Price Control Act. While we realize that Section 265 embodies a long-standing governmental policy to prevent unnecessary friction between state and federal courts, *Toucey* v. *New York Life Insurance Company*, 314 U. S. 126, we still hold as we held in *Willingham* v. *Bowles*, 321 U. S. 503, that Section 205 of the Price Control Act which authorizes the Price Administrator to seek injunctive reliefs in appropriate courts, including federal district courts, is an implied legislative amendment to Section 265, creating an exception to its broad prohibition.[1] This

[1] An alternative reason given for the decision in the *Willingham* case was that since the state court there was attempting to enjoin the Administrator from performing his duties under the Act, the District Court had power both under 205(a) of the Act and Section 24(1) of the Judicial Code to protect the exclusive federal jurisdiction which Congress had granted. But our opinion did not, as the District Court thought, depend entirely on this alternative ground.

is true, because Section 205 authorizes the Price Administrator to bring injunction proceedings to enforce the Act in either state or federal courts, and this authority is broad enough to justify an injunction to restrain state court evictions. But if Section 265 controls, as the District Court held, the Administrator here could not proceed in the federal court; since there is a proceeding pending in a state court. Since the provisions of the Price Control Act, enacted long after Section 265, do not compel the Administrator to go into the state courts but leave him free to seek relief in the federal courts, he was not barred by Section 265 from seeking an injunction to restrain an unlawful eviction. Cf. *Hale* v. *Bimco Trading, Inc.*, 306 U. S. 375.

The judgment of the District Court is reversed and the case is remanded to that Court to exercise the jurisdiction conferred upon it by Section 205 of the Emergency Price Control Act.

Reversed and remanded.

Mr. Justice JACKSON took no part in the consideration or decision of this case.